

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE: VOLKSWAGEN “CLEAN  
DIESEL” MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION**

**THIS DOCUMENT RELATES TO:**

**ALL ACTIONS**

**CASE NO.: MDL No. 2672 CRB (JSC)**

**APPLICATION OF FRANK M. PITRE AND  
COTCHETT, PITRE & McCARTHY, LLP  
FOR CO-LEAD COUNSEL OR FOR A  
STEERING COMMITTEE POSITION**

**Hearing Date: January 21, 2016  
Hearing Time: 9:00 a.m.  
Location: 17<sup>th</sup> Floor, Courtroom 6  
Judge: Hon. Charles R. Breyer**

LOS ANGELES

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January 8, 2016

**LETTER IN SUPPORT OF THE APPLICATION OF FRANK M. PITRE  
OF COTCHETT, PITRE & McCARTHY, LLP  
FOR CO-LEAD COUNSEL, OR FOR A STEERING COMMITTEE POSITION**

**Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices,  
And Products Liability Litigation*, MDL No. 2672 CRB (JSC)**

**DEAR JUDGE BREYER:**

**I. INTRODUCTION**

Pursuant to this Court's Pretrial Orders Nos. 1 and 2 (Dkts. 2 and 336) establishing specific criteria for individual applications for a Co-Lead Counsel or for a Steering Committee assignment, Cotchett, Pitre & McCarthy, LLP (hereafter "CPM") hereby respectfully submits this application for Frank M. Pitre (hereafter "Pitre") to be considered for appointment as Co-Lead Counsel or as a member of Plaintiffs' Steering Committee.

Briefly stated, Frank Pitre of CPM is particularly qualified to serve in a leadership position to guide these cases to an expeditious resolution given his trial experience and active involvement as Co-Lead Counsel for Economic Loss Class Plaintiffs in *In re: Toyota Unintended Acceleration Marketing Sales Practices & Product Liability Litigation*, MDL 2151 JVS and as a member of the Executive Committee representing Economic Loss Class Plaintiffs in *In re: General Motors Ignition Switch Litigation*, MDL 2543. In addition, Mr. Pitre has been involved in mass tort litigation for the last 25 years. Both the Toyota and GM cases focused on issues unique to the effective management of nationwide consumer and commercial class plaintiffs (dealerships and/or auto lenders) who suffered economic losses as a result of auto defects concealed by manufacturers at the time of vehicle purchase – issues directly in play here.

**II. PROFESSIONAL EXPERIENCE AND JUDGES APPEARED BEFORE**

Pitre is a partner at Cotchett, Pitre & McCarthy, LLP (CPM) located in Burlingame, Los Angeles and New York, where he has practiced for thirty-four years. Pitre is a **Fellow** of the American College of Trial Lawyers, International Academy of Trial Lawyers, American Board of Trial Advocates (President, San Francisco Chapter) and the International Society of Barristers. He has served in leadership positions for the coordination, prosecution and resolution of complex class actions, mass tort and auto defect or economic loss actions, including the following:

- *In Re: Toyota Unintended Acceleration Marketing Sales Practices and Product Liability Litigation*, MDL 2151 JVS (Hon. James V. Selna, USDC CDCA). Pitre served as co-lead counsel for the Toyota Economic Loss Class involving over 19 million vehicles, where he took the lead in formulating, preparing and supporting the damages model used by Plaintiffs' economic experts to establish class wide damages for consumers, auto dealers, rental car companies and auto lenders, across 22 vehicle product lines and 10 model years. The damages model included over 66 different regression equations and statistical analysis. Additionally, he took the lead in handling expert

damages discovery including depositions of plaintiffs' and defendants' damage experts, and preparation of expert reports. The damages model served as the basis for structuring settlement payments to consumers for diminished value of their vehicles, which he helped to negotiate.

- ***In Re: Isuzu Motors Ltd. v. Consumers Union of the United States***, USDC CDCA, 97-5685 RAP (RNBx) (Hon. Richard A. Paez, 9<sup>th</sup> Circuit). Pitre was co-lead trial counsel representing Consumers Union, publisher of Consumer Reports, who was sued by a foreign plaintiff auto manufacturer that alleged damage to millions of vehicles that bore the Isuzu brand, due to negative publicity from poor vehicle safety ratings published by Consumer Reports. Of significance, he took the lead in developing strategies to counter the regression models used to estimate the claimed diminished value of the affected models, which led to a jury verdict finding that auto manufacturer suffered no harm from any alleged wrongful conduct by Consumers Union and a complete defense verdict.
- ***In Re: General Motors LLC Ignition Switch Litigation***, USDC SDNY, 14-MD-2543 (JMF), 14-MC-2543 (JMF) (Hon. Jesse M. Furman). Pitre is a current member of the Plaintiffs' Executive Committee specifically assigned to assess and develop class wide damage models to measure diminished value and/or brand damage claims across millions of different GM makes and models over several years. In addition, he has personally taken the depositions of high ranking GM executives who failed to promptly issue recalls of GM vehicles equipped with defective ignition switches.
- ***In Re: Air Crash At San Francisco, California, On July 6, 2013***, USDC NDCA, MDL 02497 (Hon. Yvonne Gonzalez Rogers). Pitre is plaintiffs' liaison counsel managing in a collaborative effort with numerous plaintiffs' counsel and defense counsel the prosecution of 297 claims arising out of the July 6, 2013 Asiana Airlines crash. To date, approximately 189 claims have been resolved through effective use of judicial resources and the cooperative efforts of counsel.
- ***In Re: San Bruno Fire Cases***, JCCP Action No. 4648 (Hon. Steven L. Dylina, San Mateo Superior Court). Pitre served as co-lead counsel spearheading the development, prosecution and the successful resolution of over 200 individual claims within three years of the explosion and fire that killed 8 persons, destroyed over 38 homes, and resulted in injury and property damage to hundreds more. He was directly involved in personally conducting over 40 depositions of lay and expert witnesses, as well as successfully arguing the motion establishing plaintiff's right to punitive damages. Pitre helped develop categories of test cases for trial which served as the impetus for establishing benchmarks for resolution of all cases.
- ***In Re: Bextra And Celebrex Marketing, Sales Practices And Products Liability Litigation***, MDL No. 1699 (Hon. Charles R. Breyer, USDC NDCA). Pitre served as a member of Plaintiffs Steering Committee that oversaw the prosecution of both personal injury and consumer class claims against the drug company Pfizer, arising out of the nationwide sale and manufacture of the drugs Bextra and Celebrex which were alleged to pose undisclosed risks of heart attacks and strokes. Pitre was involved in all phases of the development and prosecution of the injury and class cases leading to resolution of both matters in record time before this Court. His involvement is well known to this Court.
- Numerous other mass torts MDLs in the past 25 years.
- Judges' contact information is included as Attachment 2.

### **III. WILLINGNESS TO SERVE AND ABILITY TO COMMIT A TEAM**

Although this is an individual application on behalf of Frank Pitre of CPM, we note that any individual success is necessarily dependent upon the quality of one's team and firm resources. For over four decades CPM has prosecuted some of the nation's biggest and most complex matters using a team based approach. In submitting this individual application on behalf of Frank M. Pitre, CPM acknowledges that he will be ably supported by two of his partners Joseph Cotchett, Nancy Fineman, and several

associates and paralegals. **Joseph Cotchett** is considered to be one of the foremost trial lawyers in the country who regularly tries cases, including pro bono cases for the Federal Pro Bono Project and complex mass torts, including a recent one billion dollar judgment in the *Lead Paint* cases representing California cities and counties. **Nancy Fineman** is annually one of the top 100 trial lawyers in the State and tries massive securities cases, most recently for the California State Teachers Retirement System. The associates include former Federal clerks and Assistant U.S. Attorneys. CPM has already spent considerable resources on this case, including conducting research, investigation and analysis of industry data regarding the impact of VW's conduct on vehicle prices. CPM has consulted with and retained **Joan Claybrook**, the former Administrator of the National Highway Traffic Safety Administration (NHTSA) appointed by President Jimmy Carter.

#### IV. ABILITY TO WORK COOPERATIVELY

In his representation of plaintiffs and defendants for over thirty years CPM and Pitre have worked with counsel on both sides on numerous occasions. Pitre has earned the respect of the trial bar for his integrity, professionalism and civility as noted by his election to the most respected trial lawyer organizations (*See Professional Experience*). He was recognized as a leader by both plaintiffs and defense trial lawyers with his election as the 2016 President of the American Board of Trial Advocates (N. Calif. Chapter).

#### V. ACCESS TO RESOURCES TO PROSECUTE THE MATTER

CPM is a nationally recognized firm (exclusively litigation) with substantial experience, knowledge, and skill in complex multi-district litigation in a wide variety of fields, ranging from consumer mass torts to securities and antitrust litigation. CPM is routinely named by the National Law Journal as one of the Top 25 Litigation firms in the country. CPM is intimately aware of what resources are necessary to litigate a case of this magnitude and is committed to expending the time, energy and finances, including advancing significant costs, in an efficient manner for a just result. The firm regularly tries cases.

#### VI. CATEGORY OF PLAINTIFFS PITRE AND CPM REPRESENT

CPM has filed economic loss class action cases on behalf of Volkswagen and Audi vehicle owners and/or lessees. Pitre of CPM also has extensive experience representing independent auto dealers, rental car agencies and auto lenders on a class wide basis in the *Toyota* case, for which he was designated Co-Lead Counsel for the Commercial Class – specifically the issue of **damages**.

#### VII. OTHER CONSIDERATIONS

CPM is mindful of this Court's remarks at the initial case conference of December 22, 2015, that case resolution through settlement is always an aspirational goal – but “**sometimes cases have to be tried**”. CPM believes that the only way to efficiently secure a fair and adequate resolution is to set a firm trial management schedule with the ability to try the case if necessary. Volkswagen has admitted that certain engineers designed defect devices for certain models of Volkswagen, Audi and Porsche vehicles in order to circumvent environmental compliance regulations. CPM and Pitre are experienced in what it takes to develop damages evidence, and to devote the resources necessary to prepare and successfully try cases with the attendant burden of a higher standard of proof. Pitre and CPM are committed to prepare this case for trial, not to simply act as facilitators for a settlement.

Respectfully Submitted,

/s/ Steven N. Williams

STEVEN N. WILLIAMS

COTCHETT, PITRE & MCCARTHY, LLP



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Email: [fpitre@cpmlegal.com](mailto:fpitre@cpmlegal.com)**FRANK M. PITRE****RESUME****I. EDUCATION**

**Frank M. Pitre**, a San Francisco native, earned his B.S., Cum Laude, in Business Administration in 1977. He earned his J.D. from the University of San Francisco in 1981. While at USF, Pitre served a legal externship with the California Supreme Court.

**II. HONORS**

He is a **Fellow** of the American College of Trial Lawyers, American Board of Trial Advocates (Advocate), International Academy of Trial Lawyers, International Society of Barristers, the National Board of Trial Advocacy and President of the American Board of Trial Advocates (SF Chapter).

**III. EXPERIENCE & ACHIEVEMENTS****A. Current**

He was appointed by Federal District Court Judge Jesse Furman to the Plaintiffs Executive Committee to lead litigation pending in the Southern District of New York on behalf of a nationwide class of consumers against General Motors for safety related defects in over 27 million vehicles. **MDL 2543 In Re: General Motors Ignition Switch Litigation.**

He serves as Plaintiffs Liaison Counsel with his team spearheading the co-ordination of dozens of cases filed on behalf of injured passengers against Asiana Airlines and Boeing, arising from the crash of Asiana Airlines Flight 214 in San Francisco on July 6, 2013. **In Re: Air Crash At San Francisco, California On July 6, 2013.** Additionally, he serves as Co-Lead Counsel in a shareholder derivative action against members of PG&E's Board of Directors for their abdication of fiduciary responsibilities necessary to ensure the Company's compliance with pipeline safety regulations leading up to the September 9, 2010 explosion and fire of a natural gas pipeline in San Bruno. **Salman, et al. v Darbee, et al. JCCP Action 4648-C.**

**B. Past**

In 2013, Pitre served as Co-Lead Counsel for Economic Loss Class Plaintiffs in the Toyota Unintended Acceleration Marketing & Sales Practices Cases which successfully resulted in securing final approval of a \$1.5 billion settlement on behalf of class members. **In Re: Toyota Unintended Acceleration Marketing Sales Practices & Product Liability Litigation, MDL 2151 JVS.**

**ADMISSIONS**

- U.S. Supreme Court
- California Federal & State Courts
- Numerous Federal Circuits

**AWARDS**

- 2015 Selected by Los Angeles/San Francisco Daily Journal as One of California's Top 25 Plaintiff Lawyers
- 2015 & 2014 Selected as One of Northern California's Top 10 Lawyers by Super Lawyers
- 2015 Selected by Best Lawyers as Personal Injury Lawyer of the Year for the San Francisco Bay Area
- 2014 Finalist Public Justice Trial Lawyer of the Year
- 2013 Trial Lawyer of the Year by Consumer Attorneys of California
- Honored by the San Mateo County Trial Lawyers Association as Trial Lawyer of the Year, 2006

This past year, Pitre was honored by the Consumer Attorneys of California as Consumer Attorney of the Year for his efforts in coordinating, prosecuting and resolving over 200 claims of injury, death and property destruction against PG&E. See link to **In Re: San Bruno Fire Cases: JCCP Action No. 4648.**

In 2011, Pitre recovered the largest individual wrongful death verdict in San Diego County history, when a jury awarded \$17.4 million to the wife of a high ranking U.S. Naval Officer, who was killed in a collision with an American Medical Response van. **Mazurek, et al. v. American Medical Response, et al., San Diego Superior Court Action No. 10-83975 May 20, 2011.**

In 2006, Pitre obtained one of the largest verdicts in Sutter County history where he obtained over \$45 million on behalf on an elderly minority shareholder who had been frozen out of participation in a lucrative family timber harvesting business. **Siller v. Siller, Sutter County Superior Court Action No. CVCS01-1083.**

In 2009, Pitre was recognized by the National Law Journal as one of the top plaintiff lawyers for his work as co-lead trial counsel in the **In Re: Bextra and Celebrex Mktg., Sales Practices & Product Liability Litigation (MDL 1699).** which culminated in Pfizer agreeing to pay \$894 million to settle consolidated injury and class action cases related to its pain killers Bextra & Celebrex.

He is a past president of Consumer Attorneys of California (CAOC), the 3,000-member group of lawyers dedicated to protecting and seeking justice for consumers.

Pitre served as liaison counsel and a member of the Plaintiffs Steering Committees in numerous mass torts, including: the **Alaska Air Flight 261 air crash**; and a member of the Plaintiffs Executive Committee **Singapore Airlines Flight 006 air crash in Taiwan**. Immediately prior to his committee appointments in Alaska Air and Singapore Airlines, he served as a member of the **Plaintiffs Management Committee in the California Diet Drug Litigation** where thousands of individuals were victimized by the diet pill combination **Fen-Phen**, which was condemned by the FDA for causing adverse health effects.

#### IV. **PUBLICATIONS & TEACHING**

Pitre is the author of numerous articles on mass tort and trial practice. Since 1998 he has served as the author of "California Personal Injury Proof," published by the California Continuing Education of the Bar. Pitre has served on the faculty of the Hastings College of Advocacy and the University of San Francisco Trial Advocacy Program. He also has served as the Co-Chair and presenter at several Masters In Trial programs sponsored by the ABOTA Foundation.

#### **AWARDS (continued)**

- Selected for inclusion in Best Lawyers in America each year since 2006
- Ranked among the top 500 litigators in America by Law Dragon Magazine
- Recipient of Edward I. Pollock Award for his dedicated efforts on behalf of consumers (2010)
- Named by the National Law Journal – Top 25 Litigation Firms